

Quid Novi

VOL. V NO. 21

McGILL UNIVERSITY FACULTY OF LAW
FACULTE DE DROIT UNIVERSITE McGILL

March 13, 1985
13 mars, 1985

GALE TEAM FINISHES THIRD

The Gale Cup Moot Court Competition was held at Toronto's Osgoode Hall on March 1st and 2nd. McGill's team, comprised of Angus MacKinnon, Michael Shuster, Steven Sofer, and Scott Turner, finished third behind the University of Ottawa and the overall winners, the University of Moncton.

Named after the Honourable George Gale, former Chief Justice of Ontario, and sponsored by the Ontario Branch of the Canadian Bar Association, the Gale Cup is held every year in Toronto, and all Canadian law schools are invited. This year, teams from Sherbrooke and Laval Universities competed for the first time, and the organizers were pleased to announce that, with the inclusion of francophone schools from Quebec, the competition had, in its twelfth year, achieved national dimensions.

The subject of this year's moot was the Supreme Court of Canada's decision, Attorney General of Canada v. Canadian National Transportation Ltd. Each team was asked to prepare an appeal from, and a response to, this decision. Mike Shuster and Angus MacKinnon appealed for McGill against the University of Calgary on Friday night. In front of an active bench, consisting of "Justices" Ewaschuk, Carnwath and Pepiatt, McGill won easily on

points, if not on the merits, over its western opponents.

On Saturday afternoon, Scott Turner and Steven Sofer responded against an excellent team from the University of Alberta. This round was much closer and could have gone either way. Fortunately, the bench, consisting of "Justices" Rosenberg, Lane and Taliano, preferring McGill's more direct and forceful style, held in favour of the respondents.

Unfortunately, McGill was not the only school to win both its rounds. New Brunswick, Ottawa and Moncton were also winners and

it was announced at the Banquet held for participants and judges on Saturday evening that Ottawa and Moncton had received more "judge's points" than McGill.

McGill's attempt to repeat as Gale Cup winners and to become the first school to win both the Jessup and Gale Moots in recent history, was therefore disappointed. However, McGill can be pleased that its teams have consistently placed in the top three or four at these competitions in the past several years, giving the school the finest competi-

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Learning about Cerebral Palsy

by Terry Pether

Donald Cameron of the Cerebral Palsy Association of Quebec visited the law school two weeks ago with this message: while society has come a long way in integrating the handicapped, it still has a long way yet to go. He stressed the importance of "togetherness" in the fight for rights of the disabled. Comparing the need to understand the nature of cerebral palsy to that of understanding the facts of

a case, Mr. Cameron, accompanied by a slide presentation, went on to set straight some common misconceptions.

Cerebral palsy, he said, is not a disease but a neurological disorder that can strike anyone as the result of serious brain damage arising either from lack of oxygen to the brain at birth or a head injury in later life. Mr. Cameron was affected by the disor-

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Announcements

Important

All Second Year BCL's
Pick up your mail at SAO
A.S.A.P.

Guest Lecture

Section 24 Canadian Charter:

Bringing the system of justice into disrepute--

Wednesday, March 13, 5 p.m.
Moot Court

Mr. Bernard Laprade
Crown Prosecutor

A Tribute to the Leader of Tutorial Group #9

Misty eye and wistful smile, the grim visage of Chancellor Day,
A wordless ward in wake of wondrous one who went away.
Where once we turned to him for help, we now seek out Labatt's;
A tender toast, from Thompson House, to Bobby Katz.

The eloquent tutorials shed light on heavy stuff,
You heaped on hard assignments even when we'd had enough.
You shared with us the wisdom of mispronounced Socrates,
We lost our finest to New York, in Bobby Katz.

And those that would hold otherwise are easy to refute,
By stating simply that the point they've made is probably moot.
Let no one ever question how we got to where we're at,
We owe it to our leader, Bobby Katz.

Nelson Eshleman

PROPOSAL FOR A "NATIONAL" ADMISSIONS POLICY

by Grant McRae

Introduction

The proposal which follows is predicated on the assumption that the further development of the Faculty of Law at McGill will, or should, be centered on the National Program. Of whether this is the case I do not know. Or whether it should be the case I have no doubt. I will not take this space, however, to argue for it.

The proposal is designed to remedy what I think are generally recognized difficulties with the present admissions policies of the Faculty. It would, if adopted, also bring those policies closer in line with the motivating spirit of the National Program. It will in addition, I believe, have a positive effect on the curriculum, if the changes in curriculum which will be a necessary adjunct to the new policy are made. The curricular and admissions issues are intertwined in many ways, so I will spend some time discussing both. The discussion will necessarily be of a cursory and preliminary nature, and is intended as a basis for further debate.

I begin with the more extreme version of the proposal, simply because I believe that it is the best and most consistent. As will, I hope, become clear, it also has many administrative advantages at both the curricular and admissions levels.

1. The basic version

I propose that all applicants to the Faculty be

considered as applicants to a four-year National Program leading to the awarding of both the LL.B. and B.C.L. degrees. A discretion may remain to allow the awarding of a single degree at the end of third year in exceptional circumstances. The curriculum can easily be adjusted to accommodate the new situation. One suggestion which appeals to me for many reasons, some of which will be mentioned in the discussion below, is that all students take the following courses in first year: Constitutional Law, Foundations (with the emphasis on comparative theory and methodology), Obligations Contracts, Torts, Mooting, and Tutorial. I do not believe that there is anything sacrosanct about the presence of Criminal Law, Family Law, or Property Law in the first year, although a stronger argument can be made for Property than for the others.

2. Advantages of the basic version

A. Students would not finish first year with an exclusively common or civil law perspective or way of thinking. From my experience, I do not think that this problem is mythological. Having done my first year in the LL.B. program, I still, after almost three years, do not feel comfortable in a civil law context.

B. The study of private law issues from both perspectives simultaneously can only make a more interesting and effective program. It has been my experience

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Aberrations

As I toiled along a goat-beaten path in the high, rugged mountains of Afghanistan one week-end in the not-so-distant past, it occurred to me suddenly (as occurrences often do) that the wounded Mujahadeen I followed resembled, somewhat, a first-year mooter dodging the slings and arrows of a hostile bench during his maiden performance.

And then I shut my eyes for a moment and contemplate for that nano-instant, the fragilities of life, law, and the pursuit of self-indulgence. In that crystallized iota of time-space, the Soviet gunship that hovered across the canyon was transformed into a floating frisbee dancing in the sky above Lower Campus, and I thought again of a conversation I had once had in the south of France (or was it some other chic part of Europe?) with the two Bohemians who would not mix Greek cabbage in their Easter salad.

It was in that increment of my time-life continuum that I froze and for that split-second, every question, every puzzle, every dilemma I had ever faced or felt in my life became crystal-clear and the answer to the Great Question of Life was within my grasp.

And then I reached to brush a fly from my nose and as I did I sneezed and then I realized to my dismay that the vehemence of that same sneeze expelled from my body the revelations I had just divined. Would that I had had a handkerchief...

**With apologies to Scott;
I could not resist,**

Fd Lee

OBSERVATIONS

As I was trudging reluctantly along Sherbrooke St. on Monday last, trying to delay my inevitable return to the Faculty, I was suddenly struck with the sense of loss that one always feels when something important ends in one's life.

(The 'thing' in this case was the Gale Moot, which for the past several weeks had taken up a great deal of time and energy for both me and my friends, only to end abruptly in the book-lined confines of Osgoode Hall -- amidst a hail of "God Save the Queen's" and announcements in very bad French.)

So I popped into one of the private galleries that line the street just to have a look at the unaffordable Villalauza's that were being displayed. And it occurred to me as I was wistfully browsing (and trying to ignore the disdainful glances of the salespeople) that these 'things' always came to an end. And then one starts afresh. One finds new challenges, new goals. (One

Gale Team Finishes Third Cont'd from p. 1

tive mooting program in the country.

The members of the Gale Team would like to thank Professor Blaine Baker for the time and energy devoted to their cause. We would also like to thank Grant McCrae, Richard Janda and Professor David Stevens for their invaluable help. Finally, we thank Professors Simmonds, Birks, and Kaufman, as well as Dan Bilak, Rob Horwood and Steven Fogarty for having had the patience to listen to us.

might even go to a movie, or read a book.) And one tries, above all, not to be too grumpy while figuring out what one's next goal should be -- because people tend to find one annoying egotistical and depressing when one is.

So I decided then and there to cure my post-mooting blues by writing a novel about a guy called Willie, who sets out in search of the centre of the universe -- and doesn't find it. But he does find love and adventure and a used car along the way, before eventually discovering peace of mind on a mountaintop in Greece -- not far from the place where Homer's tomb is said to have tumbled into the Aegean...

And if I ever finish this book, I'll try and sell it. But in the meantime, has anyone got a Tort's summary I could borrow?

Scott Turner

Proposal Cont'd from p. 2

that the study of similar areas of the other legal system in second year is viewed by most students as tedious and repetitive. Simultaneous study, on the other hand, should encourage a more comparative approach, if only as a result of students' questions. This cannot but make for a more interesting curriculum.

C. The Admissions Committee will be able to choose only the overall best applicants

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der due to an error made by the doctor attending his birth. This is the case with an astonishing 75% of such cerebral palsy victims. Cameron's parents sued the physician, but he fled to the United States before the proceedings began. Even if the doctor had remained in Canada, the Camerons stood little chance of succeeding in their lawsuit because, as their son insisted, it is impossible to secure the testimony of one doctor against another in establishing liability.

Mr. Cameron himself was compelled to seek legal redress on two occasions. Firstly, when, as a high school student, he was indefinitely suspended after his school's principal received a petition from parents suggesting that, because his marks were so high, Cameron was benefitting from a disproportionate amount of his teachers' time at the expense of others. He won an order for reinstatement from the court with the support of a student body more enlightened than their parents. On the second and more recent occasion, the accused skipped town before the court could hear Cameron's charge that a taxi-driver, frustrated with Cameron's lack of motor control in entering the car, struck him.

Despite such problems, Mr. Cameron intimated that he has the same aspirations as other members of society, but society is not prepared to accommodate him. As a younger man he looked forward to finding a job. He learned, however, that his credentials were irrelevant to reticent employers discouraged by his speech impairment and lack of

LETTERS TO THE EDITOR

Dear Editor:

I wish to respond to the concern expressed by a "Thoroughly outraged majority of the student body" in Volume V, no. 20 of Quid Novi to the effect that an announcement submitted by me regarding the Gale Cup and Jessup International Mooting Competitions contained a "negligent and disgraceful oversight".

Indeed, a superlative was inadvertently omitted; rectification is in order. Instead of reading "McGill will be well represented" at the Jessup Competition and certain individuals "will be representing" the faculty at the Gale Cup Competition, the announcement should have read "McGill will be extremely well represented" at the Jessup Competition!

Apologetically,
Elaine Marchand

Dear Editor:

I would like to express my appreciation for Prof. de Mestral's enlightening account of the history of Old Chancellor Day Hall (Letters to the Editor; Quid Novi, March 6). Most welcome too was his suggestion that "all members of the faculty use other entrances during winter, particularly the New Chancellor Day Hall Entrance".

Such a practice would indeed help preserve our building, and it may interest your readers to know that Prof. de Mestral was not the first to recognize this problem and propose a solution. The suggestion was made much earlier by the architects of New

Chancellor Day Hall, who themselves found suitable authority for their reasoning in the most ancient of legal maxims they caused to be chiselled above the western entrance to our learned faculty. Any student raising his eyes from the pavement will see the words "Audi Alteram Partem" and recognize therin Prof. de Mestral's admonition "Here, the Other Side."

Yours very truly
An errant scholar

Dear Editor:

Did you know that...
[t]he sidestream smoke that both smokers and non-smokers are forced to inhale from an "idling" cigarette contains 50 times more of some potent carcinogens, such as N-nitrosodimethylamine (NDMA) than the mainstream smoke that smokers willingly draw into their lungs... Epidemiologic studies are beginning to show an increased evidence of lung cancer in non-smokers chronically exposed to cigarette smoke. ...The supreme court of Ontario has ruled that the common law right of smokers to smoke "must be subject to the right of their neighbours to enjoy good health, free from the health hazard or discomfort occasioned by second-hand smoke".

--Peter Morgan, MD, DPH, DECH, "Time for Action on Passive Smoking," 1982.

"NDMA is one of the most potent carcinogens known".

--Health and Welfare Canada "Chronic Diseases in Canada," 1982; Vol. 3, No. 1.

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PLACEMENT CENTRE

Ontario

Osler, Hoskin & Harcourt have supplied the Placement Centre with a large number of the firm's booklets. Those of you who are interested in this firm may pick up one in the Admissions Office. A brochure is also on display in Room 109.

The articling vacancy list as submitted by Osgoode Hall dated January 18, 1985, is now posted in the Centre.

Smith, Lyons, Torrance, Stevenson & Mayer have advised this Faculty that the trend of hiring second year law students for summer jobs had just recently commenced in Toronto. As a result the Law Society of Upper Canada has indicated that no summer job interviews could be held till February 1. At the beginning of February interviews were being conducted by a number of Toronto firms even though the positions available are significantly less than those available for articling. Students however should not be dissuaded from attempting to obtain summer jobs. Please refer to posting #75 for full particulars of this matter.

Campbell, Godfrey & Lewtas have provided the Centre with a copy of their Articling Placement Survey (Posting #76) in the Centre. Additional information regarding this firm has also been received and is available for perusal to interested students in the Admission Office.

McMillan, Binch will be carrying out interviews of students for employment during the summer of 1985. The firm is seeking 6 to 8

students for this period. For further information refer to posting #77.

Davies, Ward & Beck 1985 summer associate program. Second year students are invited to apply for a position as a summer associate with this firm. Inquiries may be directed to John Zinn or Brian Grasmuck, by collect telephone (416) 963-0900 or by writing to:

Davies, Ward & Beck
P.O. Box 147
Commerce Court West
M5L 1G8
Toronto, Ontario

Applications should be directed to Ms. Heather Smith at the same address and should include academic results for the first year and one-half of law school (refer to posting #78).

Lang, Michener, Cranstton, Farquharson & Wright require summer students. Interested persons should contact Michael K. Eisen, Esq. at the firm's mailing address of P.O. Box 10, 8th Floor, 1 First Canadian Place, Toronto, Ontario, M5X 1A2. (Refer to posting #79).

Quebec

The firm of Ogilvy, Renault has one or two openings for stagiaires for the period of May 1986 to November 1986 or November 1986 to April 1987. Students interested in applying should first refer to the firm's brochure which is available in the Admissions Office and forward to this firm as soon as possible, a letter of application, a curriculum vitae and an up-to-date transcript to Mr. G.B. Maughan, Chairman of the Students and Stagiaires

Committee of Ogilvy, Renault. (Refer to posting #80).

Mrs. Laura Becker-Lewke, Counsel for Navios Corporation of Greenwich, Connecticut and McGill graduate has written to offer her help and that of her husband, Ronald, also a McGill law graduate, to McGill graduates with writing and passing the New York bar and/or to seek admission to U.S. Federal Courts.

All second year law students should check with SAO for letter and brochure from Byers, Casgrain regarding articling positions with their firm.

Letters

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"[A] non-smoker present for one hour in a public house could inhale as much [NDMA] as he would be smoking up to 15 non-filter cigarettes or up to 35 filter cigarettes".

---S.L. Stock, "Risks the Passive Smoker Runs," The Lancet, Nov. 15, 1980 (Leading British Medical Journal).

The support of smokers and non-smokers will be canvassed in coming days to implement a solution to the problem of unhealthy air in the Law Faculty.

**Clean Air Lobby
McGill Law Faculty**

Quote of the Week

"First I'll tell you the official reasons, then I'll tell you the subversive real reasons".

**Julius Grey in
Judicial Law**

Proposal
Cont'd from p. 3

for the available positions in the school. I hope that the advantages of this do not need amplification. The negative aspects are discussed below.

D. A whole array of "political" and social tensions in the Faculty, especially among students, will be alleviated by the fact that no one will henceforth be labelled as belonging to one stream or the other.

E. Streaming, and course and exam scheduling, will be immensely simplified by the fact that all students will be in the same program.

3. Difficulties with the basic version

A. Some potential applicants may be discouraged from applying to McGill by the fact that the program will involve a mandatory four years. I do not think that this is a heavy price to pay. First, I doubt that the numbers will be large. Second, we will be assured of a student body uniformly interested in the national scope of the program.

B. As the present LL.B. pool is larger and better-qualified, if trends continue they will be disproportionately represented. This, I suspect, will be the major criticism of the proposal. I do not think that it should be. First, it is anomalous, given the content of the proposal, to speak of "LL.B." and "B.C.L." students: all students will be National Program students. If what is feared is that a disproportionate number of graduating students will leave the province, this result (given that it occurs, a not inevitable prospect) does not strike me as in-

consistent with the spirit of the National Program -- those individuals will be disseminating the idea that the civil law is worthy of study by common lawyers. They will be bringing the civil law perspective to bear on national issues.

C. An English-speaking student wishing only to take a civil law degree in English in order to practise in Quebec will not be able to do so. He or she will have to take the B.C.L. in French at a school other than McGill, or stay for an extra year here. Judging by the high proportion of B.C.L. students who presently take the National Program, the number of students in this category will be fairly small. It seems to me that their choice will not be an unhappy one, as they could not but benefit from either studying the civil law in French or studying both systems. The question remains whether McGill has some moral or societal obligation to provide an exclusively civil law English program for those who wish it.

4. Other versions of the proposal

If the above version is seen as too radical a departure from the present state of things, it might be modified in two ways. First, there might simply be created a third, National Program entry category for a certain number of students. Second, priority might be given to National Program applicants. The latter version might mean that the present curricular structure could be maintained so there are actually three alternative versions of the proposal here.

I will not spend a great deal of time discussing these alternatives, for it

seems to me that they all suffer from the same insurmountable defects: they address the "spirit of the National Program" issue piecemeal, and they have few of the ancillary virtues of the basic version. They will make administration more, instead of less, complex. They do not eliminate the identification with one or another program. The fact that the first-year proposal (insofar as it will be incorporated into these versions at all) will not be universal will dilute the pedagogical effects of it. The splitting of the entering class into groups whose admittance is based on different standards will be exacerbated instead of alleviated. Finally, if the "critical mass" theory of the size of the common law class is true, there will be a problem, since if the present proportions are maintained the LL.B. class will be reduced by one third of the number of National Program admissions. If the anxieties mentioned in section 3B, above concerning students who leave the province prevails, the basic proposal could be modified by the imposition of some sort of quota to reflect the present state of affairs. A minimum number of Quebec-resident students, or students expressing an interest in remaining in the province, could be admitted. This idea will, of course, result in some of the advantages of the basic proposal not being realized, but it is, in my view, preferable to the other alternatives.

Finally, the problem discussed under 3C above might be resolved by permitting students to take only the B.C.L. degree (though not the LL.B. alone). They would still,

Cont'd from p. 4

muscle control. In Quebec, legislation for the rights of the disabled has loopholes that continue to avail to such employers. Furthermore, said Cameron, the courts have not decided on a type of integration acceptable to all. What suits one handicapped individual is not necessarily suitable for another. That 98% of Quebec's disabled are on welfare attests to his belief that legislative and judicial efforts in this area are unsatisfactory.

Because the handicapped are helpless in many ways they are forced to rely on services provided by various levels of government. After all, said Cameron, their parents cannot be expected to attend them all their lives. Unfortunately, these services are inadequate. As an example, recalling three hour waits for rides, Cameron insisted that there are simply not enough "mini-buses" available. He blames Mayor Drapeau for the City of Montreal's refusal to adapt the metro system to serve the handicapped, or at least improve transit conditions for them. The uncooperative mayor, says Cameron, merely refers petitioners to the provincial government.

Many handicapped people live in residences because they cannot afford the sixty-seven thousand dollars a year that Cameron says they require to be self-sufficient. This service too is not without shortcomings. Cameron cites the most serious problem as that of strikes. Because the welfare of the residents is seriously compromised when nurses and orderlies walk off the job, he believes that public sector strikes should be legally forbidden.

Mr. Cameron continued his discussion by considering the most contentious issue pertaining to the rights of the disabled. He referred to a Quebec case in which a young woman with cerebral palsy sought a court order that would allow her to starve herself to death. The judge refused her request. Similarly, in Vancouver, the parents of a severely retarded and handicapped boy declined the requisite consent for urgent brain surgery, preferring to let their child die. The province took custody of the boy and the operation proceeded. Mr. Cameron used these examples to buttress his claim that Parliament and the courts have a duty to provide a single rule of law, applicable across Canada, that guards the right to life of the disabled.

"Breaking down the barriers is essential," Mr. Cameron said in conclusion. This is a task for the handicapped and the rest of society. There is a role for the legal community, he said. By working, together, he suggested, we can fight for laws that strengthen the rights of the disabled and launch challenges in the courts

when these rights are violated.

It is easy to believe Donald Cameron when he says he is a man who has fought long and hard for his commitments. At the gathering two weeks ago, his example served to impart the courage and resolve needed to help people who, in every day life, are imprisoned in one way or another at every turn.

Admissions Cont'd from p. 6

in order to alleviate the administrative complexities of having more than one program, be required to take the new National Program first year, just as present B.C.L. students are required to take common law courses in second year.

Addendum

Since I wrote the above I have been convinced by conversations with many people that some parts of the main proposal are too extreme. I think that modifying it to institutionalize the possibility of opting out with either degree at the end of three years, while retaining the National Program admissions policy and first year, would be an improvement.

Quid Novi Presents The 1985 Grammy Nominations

Performer

H.P. Glenn
Jane Glenn
Frank Buckley
David Stevens
Ethel Groffier-Atala
Paul Crêpeau
Lazar Sarna
Peter Benson
Ron Sklar
Margo Somerville

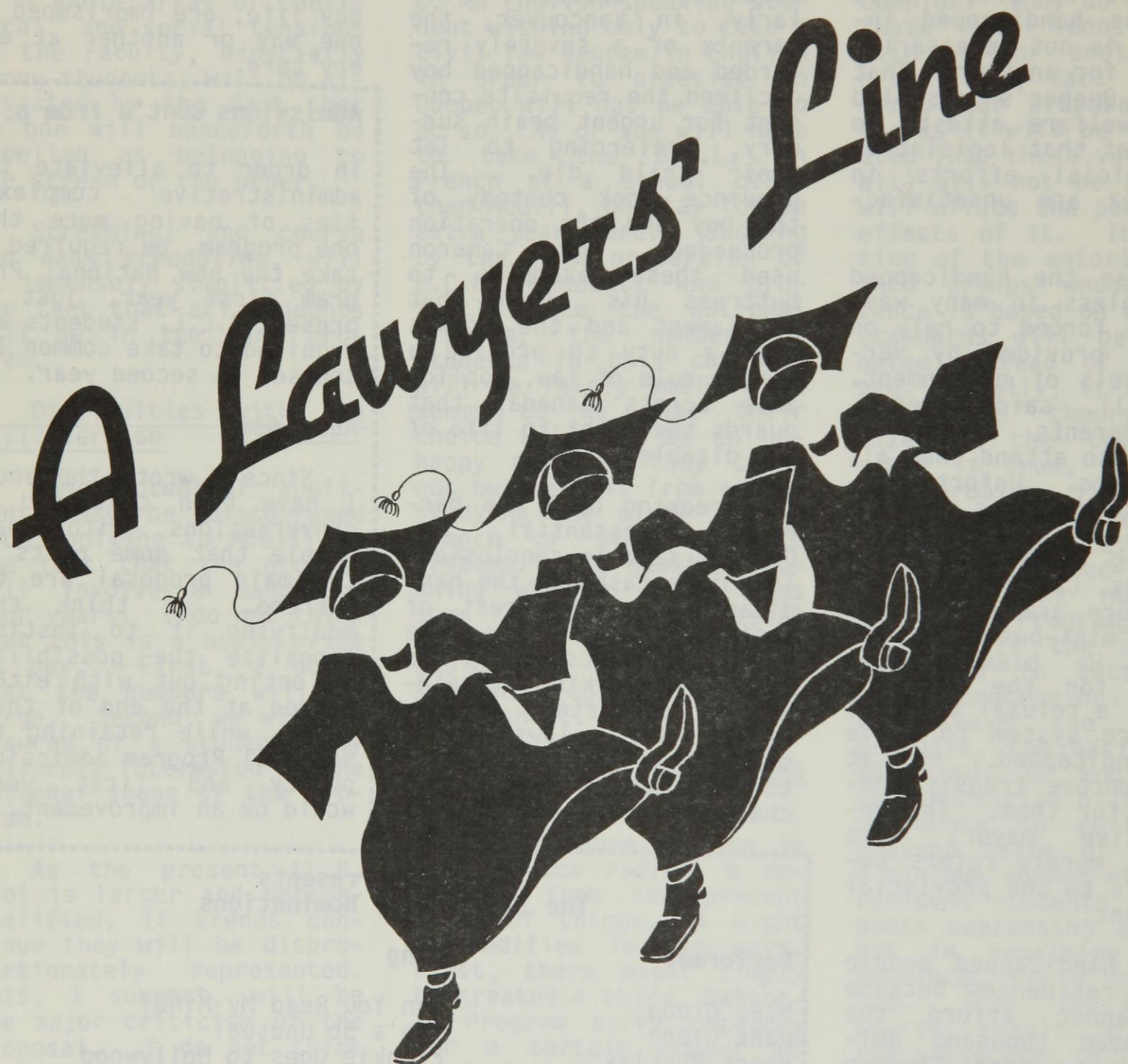
Allan Kaufman
Stephen Scott
Blaine Baker

Mrs. Lederer

Song

Can You Read My Mind?
She's So Unusual
Frankie Goes to Hollywood
Against All Odds
Take the Money and Run
I Did It My Way
Wake Me Up Before You Go-Go
Do Ya Think I'm Sexy
The Boy From New York City
Just a Spoonful of Sugar
[Helps the Medicine Go Down]
He's So Shy
Beast of Burden
Hinkey Dinkey Parlez Vous
[that's French you know]
I Heard It Through The Grapevine

Skate Nite '85



Thurs. March 21
7 p.m.
Union Ballroom

Tickets on sale now !!
Admission -- \$4.00
Party after the show.